

SERVICE DATE – JULY 12, 2013

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35747

NORFOLK SOUTHERN RAILWAY COMPANY—LEASE EXEMPTION—BNSF
RAILWAY COMPANY

Digest:¹ This decision permits Norfolk Southern Railway Company (NSR) to lease from BNSF Railway Company approximately 797 feet of rail line in Chicago, Ill. NSR will use the lease to upgrade and maintain the line.

Decided: July 11, 2013

By petition filed on June 26, 2013, Norfolk Southern Railway Company (NSR) seeks an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. §§ 11323-25 to lease from BNSF Railway Company (BNSF) approximately 797 feet of rail line, known as the Lumber Lead, including certain underlying and adjacent land and improvements, in Chicago, Ill. (the Line). NSR will execute a lease agreement with BNSF (the Agreement) and will use the lease to upgrade and maintain the Line. We will grant the exemption, subject to standard labor protective conditions.

BACKGROUND

In its petition, NSR explains the nature and objectives of its proposed lease. Through the Agreement, NSR will lease, upgrade, and maintain the Line and its connections to NSR's main lines as part of its undertakings that in turn are part of the Chicago Region Environmental and Transportation Efficiency (CREATE) Program.² NSR will replace the Line's hand-thrown turnouts with power turnouts, which will be controlled by NSR through a new remote controlled interlocking with BNSF supervisory control on BNSF-owned track. NSR states that the Agreement is for an initial five-year term and that it contains no provisions that would limit NSR's ability to interchange with third party rail carriers as a result of entering into the proposed

¹ This digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² According to NSR, the CREATE Program is a public-private partnership between the Chicago Department of Transportation, the Illinois Department of Transportation, and the American Association of Railroads, including Metra and the freight railroads operating in Chicago, to increase efficiency of the region's rail infrastructure, and to enhance the quality of life for Chicago area residents.

transaction. NSR also asserts that the proposed transaction meets the statutory requirements of § 10502 and therefore warrants an individual exemption.

NSR has requested expedited handling, asserting that the upgrade of the Line and the other related improvements are scheduled to start during the Summer and early Fall of this year. NSR states, in order to commence work on the Line timely in connection with other related improvements, it must be able to consummate the lease by July 15, 2013.

In a decision served on July 1, 2013, and published in the Federal Register on July 3, 2013 (78 Fed. Reg. 40,268), the Board instituted an exemption proceeding pursuant to 49 U.S.C. § 10502(d) and asked that persons wishing to comment file their submissions by July 10, 2013. No comments were filed.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 11323(a)(2), prior Board approval is required for a rail carrier to lease the property of another rail carrier. Under 49 U.S.C. § 10502, however, the Board must exempt a transaction or service from regulation when we find that: (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

Detailed scrutiny of the proposed transaction through an application for review and approval under 49 U.S.C. §§ 11323-25 is not necessary here to carry out the rail transportation policy of 49 U.S.C. § 10101. This project is designed solely to make existing rail operations more efficient, an objective that is entirely consistent with the rail transportation policy. As noted by NSR, the transaction would result in more fluid and efficient train operations over various connections between major freight yards and main line tracks in the Chicago area and would reduce delays. Therefore, granting an exemption and allowing the transaction to proceed would ensure the development and continuation of a sound rail transportation system and foster sound economic conditions. See 49 U.S.C. §§ 10101(4) and (5). Further, an exemption from the application process would expedite regulatory action and reduce regulatory barriers to entry and exit, in accordance with 49 U.S.C. §§ 10101(2) and (7). Other aspects of the rail transportation policy would not be adversely affected.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power.³ There are no shippers located on the Line, and even if there were, no shipper would lose an existing rail service option as a result of the proposed lease transaction. Rather, the lease should benefit shippers by allowing NSR to reconfigure a connection to move traffic more efficiently. No shippers have filed comments objecting to the lease.

Under 49 U.S.C. § 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of employees. Accordingly, as a condition to

³ Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

granting this exemption, we will impose the standard employee protective conditions in Norfolk and Western Railway—Trackage Rights—Burlington Northern, Inc., 354 I.C.C. 605 (1978), as modified in Mendocino Coast Railway—Lease and Operate—California Western Railroad, 360 I.C.C. 653 (1980).

The proposed lease is exempt from both the environmental reporting requirements under 49 C.F.R. § 1105.6(c) and the historic reporting requirements under 49 C.F.R. § 1105.8(b).

As noted above, NSR requests expedited consideration of its petition so that it can commence work in conjunction with other improvements. Accordingly, the request will be granted and the exemption will be effective on July 15, 2013, rather than the normal 30 days provided for by 49 C.F.R. § 1121.4(e). This regulation also provides for periods where persons can seek a stay and reconsideration of our grant of an exemption before the exemption becomes effective. Here, however, because of the urgency shown by NSR and because no person responded to our request for comments served on July 1, 2013, and published on July 3, 2013, we will not provide for those periods in this proceeding. If any person wishes to object to this exemption, a petition to revoke can be filed at any time. See 49 C.F.R. § 1121.4(f).

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. § 10502, we exempt from the prior approval requirements of 49 U.S.C. §§ 11323-25 NSR's lease of the above-described segment, subject to the employee protective conditions in Norfolk and Western Railway—Trackage Rights—Burlington Northern, Inc., 354 I.C.C. 605 (1978), as modified in Mendocino Coast Railway—Lease and Operate—California Western Railroad, 360 I.C.C. 653 (1980).

2. This decision will be effective on July 15, 2013.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.